

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

UNITED STATES OF AMERICA

v.

ROBERT WARE

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Case No. 3:96-cr-00008

Judge Campbell

**ORDER**

Defendant Robert Ware has filed a Motion for Relief from Final Judgment (ECF No. 403), along with a motion for discovery, expansion of the record, and an evidentiary hearing (ECF No. 404). The United States has filed a response in opposition to both motions. (ECF No. 406.)

As set forth in the accompanying memorandum opinion, the Court construes the Motion for Relief from Judgment as an unauthorized second or successive motion under 28 U.S.C. § 2255. Before this Court may consider the merits of any the claims made in a second or successive habeas motion, the movant must first request and obtain an order from the Sixth Circuit Court of Appeals authorizing this Court to consider the successive petition. 28 U.S.C. §§ 2255(h), 2244(b)(3)(A). In the Sixth Circuit, when a prisoner has filed a successive habeas petition in the district court without first obtaining authorization from the court of appeals, the district court must, in the interest of justice pursuant to 28 U.S.C. § 1631, transfer the case to the Sixth Circuit for consideration in accordance with standards set forth in § 2244(b). *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (citing *Liriano v. United States*, 95 F.3d 119, 122 (2nd Cir. 1996)); *see also In re Smith*, 690 F.3d 809, 809–10 (6th Cir. 2012) (reconfirming the propriety of the procedure established by *Sims*).

Accordingly, the Clerk of Court is **DIRECTED** to **TRANSFER** this matter to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631 and *In re Sims*, 111 F.3d 45 (6th Cir. 1997).

Ware's motion for discovery (ECF No. 404) is **DENIED** as moot.

The Clerk is further **DIRECTED** to close this case without entry of a judgment.

It is so **ORDERED**.



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Todd Campbell  
United States District Judge